

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Walter W. Thiemann, <u>et al.</u> ,	)	
	)	
	)	
Plaintiffs,	)	Case No. 1:00-CV-793
	)	
vs.	)	
	)	
	)	
OHSL Financial Corporation,	)	
<u>et al.</u> ,	)	
	)	
Defendants.	)	

O R D E R

This matter is before the Court on cross-motions for summary judgment filed by Plaintiffs Walter W. Thiemann, et al., (Doc. No. 249) and Defendant Provident Financial Group, Inc. (Doc. No. 270). Also before the Court for consideration is Plaintiffs' motion to strike affidavit of Tayfun Tuzun (Doc. No. 280). For the reasons that follow, Plaintiffs' motion for summary judgment is not well-taken and is **DENIED**; Defendants' motion for summary judgment is well-taken and is **GRANTED**; Plaintiffs' motion to strike is **MOOT**.

Plaintiffs and Defendant Provident Financial Group, Inc. ("PFGI") each move for summary judgment on Plaintiffs' claim under Section 11 of the Securities Act, 15 U.S.C. § 77k, regarding PFGI's restatement of earnings in March 2003. The background to this claim is fully outlined in the Court's order of May 28, 2004 (Doc. No. 336). In its motion for summary judgment, PFGI correctly argues that this claim is barred by the

three year statute of repose in 15 U.S.C. § 77m. The Court's reasoning for application of the statute of repose to this claim is fully set-out in the Court's earlier order and will not be repeated here. See id. at 11-14. The Court simply incorporates that analysis by reference here.

Accordingly, for the reasons stated in the earlier order, Plaintiffs' Section 11 claim relating to PFGI's restatement of earnings is barred by the statute of repose. Therefore, PFGI's motion for summary judgment is well-taken and is **GRANTED**. Plaintiffs' motion for summary judgment is not well-taken and is **DENIED**. This claim is **DISMISSED WITH PREJUDICE**. As a result of this decision, Plaintiffs' decision to strike the affidavit of Tayfun Tuzun is **MOOT**.

**IT IS SO ORDERED**

Date October 27, 2004

s/Sandra S. Beckwith  
Sandra S. Beckwith, Chief Judge  
United States District Court